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FILED
OCT 25 2006
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) Case No. 05-20041-A-11
RUSS TRANSMISSION, INC.,) Docket Control No. FWP-8
Debtor.) Oct. 5, 2006

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The motion of the chapter 11 trustee, Hank M. Spacone, to convert the chapter 11 petition to one under chapter 7 and (A) to terminate the business operations of Russ Transmission Inc.; (B) to authorize post-conversion operation of rental real properties; (C) to authorize use of cash collateral; and (D) to authorize payment of chapter 7 expenses from unencumbered funds, came on for continued hearing on October 5, 2006, at 9:00 a.m.

The chapter 11 trustee appeared by and through his attorney of record, Thomas A. Willoughby of Felderstein, Fitzgerald, Pascuzzi & Willoughby. Daniel L. Egan and Megan A. Lewis of Wilke, Fleury, Hoffelt, Gould & Birney, LLP, appeared for creditor and shareholder Kirk Nelson. Thomas Phinney of Parkinson & Phinney appeared for creditor and shareholder Kevin Nelson. All other appearances were as noted on the record.

(436)

1 Having given due consideration to the motion, the
2 declarations and other evidence submitted in support of the
3 motion, any opposition and/or response filed, the record and
4 proceedings in the above-captioned case, any stipulations recited
5 in open court, the arguments of counsel and other interested
6 parties at the hearing, and for other good cause shown, the court
7 hereby finds, as a matter of fact, and/or concludes, as a matter
8 of law, as provided under Federal Rules of Bankruptcy Procedure¹
9 7052 and 9014, in addition to any findings and conclusions stated
10 orally on the record, as follows:

11 1. On January 3, 2005, the debtor, Russ Transmission,
12 Inc., filed a voluntary chapter 11 petition. A trustee was
13 thereafter appointed pursuant to 11 U.S.C. § 1104(a)(2) on or
14 about February 18, 2005.

15 2. On July 20, 2006, the trustee filed his motion to,
16 among other things, convert this case to one under chapter 7, use
17 cash collateral, and to operate a portion of the debtor's
18 business while the case proceeds under chapter 7.

19 3. The motion is a contested matter over which this court
20 has subject matter jurisdiction. See 28 U.S.C. § 1334(b) and 11
21 U.S.C. §§ 363, 704, 721, & 1112. It is a core proceeding. See
22 28 U.S.C. §§ 157(b)(2)(A) and (O).

23 4. The notice of the motion complied in all respects with
24 the requirements of the Bankruptcy Code and the Bankruptcy Rules,
25 and it fully and adequately described the relief requested in the
26 motion and informed parties in interest how to receive all

27 1 All subsequent references to the Federal Rules of
28 Bankruptcy Procedure herein shall be to the "Bankruptcy Rules."

1 supporting documentation for the motion. Under the circumstances
2 of this case, the notice of the motion provided fair and
3 reasonable notice of the motion, the hearing on the motion, and
4 the deadlines and procedures for opposing the motion.

5 5. The motion and the notice of the hearing on the motion,
6 as well as notice of the deadline for a response to the motion,
7 were duly served on all required and necessary parties, including
8 the debtor, Kirk Nelson, Kevin Nelson, and their respective
9 attorneys; all creditors; parties requesting special notice; and
10 the Office of the United States Trustee. Notice and service was
11 in accordance with Bankruptcy Rules 2002(a)(4), 2002(f) and
12 2002(k).

13 6. All objections, if any, to the motion have been
14 withdrawn, resolved, or overruled.

15 7. In addition to granting this motion, the court is also
16 denying confirmation of the plan of reorganization proposed by
17 Kevin Nelson.

18 8. Cause exists to convert this case to chapter 7 based on
19 the inability of the Debtor and/or the shareholders to confirm a
20 plan of reorganization or liquidation. 11 U.S.C. § 1112(b)(2).²

21 9. Conversion of the case rather than dismissal is in the
22 best interests of creditors and parties in interest. The
23 following issues are better adjudicated in a chapter 7 case: (a)
24 the ability of the chapter 7 trustee to sell both the estate's
25 75% interest in the Dos Rios and Shop properties and the disputed

27 ² This case was commenced prior to the 2005 Code
28 amendments, which amendments became effective with respect to
section 1112 for cases commenced on or after October 17, 2005.

1 25% in those properties of IGDC; (b) the resolution of the appeal
2 and other issues surrounding the Lionudakis claim; (c) the
3 resolution and administration of any chapter 11 administrative
4 claims; and (d) administration in a chapter 7 case permits
5 additional options to resolve shareholder disputes, including but
6 not limited to a re-conversion to chapter 11, if the shareholders
7 eventually resolve their differences.

8 10. Additionally, confirmation of the plan or dismissal
9 would result in the expiration of the automatic stay. Given that
10 the management of the debtor is deadlocked, liquidation of
11 the debtor's assets outside of a chapter 7 case would be
12 difficult. There would be a substantial risk that secured
13 creditors would not be paid and, in the absence of the automatic
14 stay, that real estate assets would be lost to foreclosure.

15 11. In deciding between dismissal and conversion, the court
16 has considered that Kirk Nelson, a 50% shareholder, supported
17 conversion as opposed to dismissal or confirmation of the plan of
18 reorganization proposed by Kevin Nelson. Kirk Nelson has been in
19 charge of, and involved in, the day-to-day business affairs of
20 the debtor for many years. Kevin Nelson, however, has been
21 absent from the business for many years and has not been involved
22 in its management. As between the two, Kirk Nelson is most
23 familiar with, and knowledgeable of, the debtor's business and
24 its ability to operate successfully and profitably in the future.
25 His opinion, then, that the debtor's business cannot continue to
26 operate is persuasive.

27 12. No creditors supported dismissal.

28 13. Finally, Kevin Nelson and Kirk Nelson each are the

1 record owners of 50% of the outstanding shares of the debtor's
2 stock. They are deadlocked on all material issues affecting the
3 debtor's business. This deadlock precludes any effective
4 reorganization and it makes operating profitably outside of
5 bankruptcy court unlikely.

6 14. Further complicating the debtor's corporate governance,
7 Ronald and Mary Ann Nelson, the parents of Kirk and Kevin Nelson,
8 may claim that their sons hold a portion of their stock for their
9 benefit. If the case is dismissed, this litigation likely will
10 consume the attention and the resources of the parties to the
11 detriment of the debtor's business and creditors. Admittedly,
12 even upon a conversion of this case to chapter 7, the dispute
13 with the parents may have to be resolved in state court.
14 However, this will have no impact on the debtor if the case is
15 converted to chapter 7. The winding up of the debtor's business
16 will not be affected by dispute.

17 15. Pursuant to 11 U.S.C. § 721, continued operation of the
18 debtor's rental real estate is in the best interests of the
19 debtor and creditors. This real estate is more likely to fetch
20 its fair market value if it is occupied by rent paying tenants.
21 In order to achieve that goal, a chapter 7 trustee must have the
22 authority to rent the property.

23 16. Conversely, the continued operation of the debtor's
24 transmission business after conversion to chapter 7 will not be
25 in the debtor's or the creditors' best interests. That business
26 operates, at best, on a break-even basis. Under chapter 7, the
27 trustee must cease business operations unless he or she obtains
28 authority pursuant to section 721 to operate the business.

17. Finally, pursuant to 11 U.S.C. § 363, the trustee and the chapter 7 trustee will be authorized use of cash collateral consisting of the rents collected from the rental real property. These rents may be used by the trustee and by the chapter 7 trustee to pay actual expenses associated with the rental properties in accordance with the budget attached as Exhibit A to the Declaration of Hank Spacone in Support of Chapter 11 Trustee's Motion to Convert.

18. These rents are the cash collateral of those creditors holding deeds of trust that encumber each rental property. The interests of these creditors in their cash collateral is adequately protected by significant equity cushions in each real property (see the findings and conclusions entered in connection with Docket Control No. PP-11), and by the payment of rents that are not needed by the trustee to defray expenses associated by the operation of the rental properties.

A separate order will be entered on the trustee's motion, and a separate order will be entered denying confirmation of the plan of reorganization proposed by Kevin Nelson.

Dated: 25 Oct. 2006

By the Court

Michael S. McManus, Chief Judge
United States Bankruptcy Court

CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a
judicial assistant to the Honorable Michael S. McManus, mailed by
ordinary mail to each of the parties named below a true copy of
the attached document.

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19 Dated: October 26, 2006

Susan C. Cox
Susan C. Cox
Judicial Assistant to Judge McManus